IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3502 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAKWANA FATESINH RAMSINH

Versus

DIST HOME GUARD COMMANDER

Appearance:

MR ASHISH M DAGLI for Petitioner

Messrs Patel Advocates for respondent no.1.

Mr.Digant P. Joshi, ASSTT GOVT. PLEADER for respondent no.2.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 23/03/2000

ORAL JUDGEMENT :

With the consent of the parties, the matter is taken up for final disposal. this is a petition filed by the petitioner seeking directions against the respondent to appoint him as an Armed Constable and also to quash

and set aside the letter dated 10.2.1999, Annexure 'H' to the petition.

2. Mr.Dagli for the petitioner has produced certified copy of the judgement in Special Atrocities Case No.7 of 1998 decided by the learned Additional Sessions Judge, Bharuch on 3.10.191998. It is the same judgement which is referred to in the aforesaid letter dated 10.2.1999, Annexure 'H'. It is mentioned in the said letter dated 10.2.1999 that in the aforesaid judgement it is mentioned that so far as the offence under sec.452, 504, 506(2), 114 of IPC and sec.3(1), 10, 3(1), 3(10) of the Atrocities Act and sec.135 of the Bombay Police Act, a case bearing No.CR- I- 98/98 was filed against the petitioner and in the said case the petitioner was given acquittal by the learned Additional Sessions Judge, Bharuch by his order dated 3.10.1998. It is further mentioned in the said letter that in the aforesaid judgement so far as sec.504 of IPC is concerned there is a reference that a compromise has taken place. Thereafter, the said letter proceeds to interpret the said compromise as an admission on the part of the petitioner and mentions that in view of that (the compromise with regard to an offence under sec.504 of IPC, which is to be treated as an admission on the part of the petitioner) the case of the petitioner cannot be considered for appointment in the Armed Branch. Mr.Dagli submitted that he does not have any specific instructions as to whether the compromise referred to in the said letter dated 10.2.1999 was produced before the competent authorities by the petitioner or by the department. Mr.Joshi appearing for the respondents is also not in a position to make any positive statement about the said compromise being placed before the competent authority while passing the aforesaid impugned letter/ order dated 10.2.1999. In fact, the District Supdt. of Police was required to peruse the compromise entered into between the parties under sec.504 before reaching to the aforesaid conclusion. It goes without saying that many a time the compromise is entered into for various reasons and every time, every compromise cannot be interpreted as an admission on the part of the alleged accused. The order/ letter dated 10.2.1999 is quashed and set aside.

3. In this view of the matter the District Supdt. of Police is directed to consider the case of the petitioner afresh and decide the same latest by 30.5.2000. Respondent no.1 shall communicate the decision to the petitioner by Registered Post AD. With the above directions the petition is disposed of. Rule is made absolute to the aforesaid extent only with no

order as to costs. Liberty to revive in case of difficulty.

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